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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Special process on missing persons in the territory of the former Yugoslavia

Report submitted to Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to Commission resolution 1996/71

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List of acronyms

AMBD	Ante-mortem database
BIM	Association for the Promotion of the Ludwig Boltzmann Institute
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
HOS	Croatian Defence Forces
HVO	Bosnian Croat forces
ICMP	Internationl Commission on Missing Persons in the Former Yugoslavia
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFOR	(multinational military) Implementation Force
IPTF	International Police Task Force
JNA	Yuguslav National Army
MAC	(United Nations) Mine Action Centre
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
PHR	Physicians for Human Rights
SFOR	(multinational military) Stabilization Force
UNHCR	United Nations High Commissioner for Refugees
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNPA	United Nations Protected Areas
UNPROFOR	United Nations Protection Force
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium

Introduction

1. More than one year after the end of the armed conflict in Bosnia and Herzegovina as well as the signing of the Basic Agreement on Eastern Slavonia and the Dayton Peace Agreement for Bosnia and Herzegovina, daily life seems to be gradually normalizing even in those regions of the former Yugoslavia that were most affected by the war and the policy of "ethnic cleansing". On 21 June 1996, the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) announced that the demilitarization of this region was successfully completed. On 23 August 1996, the Agreement on the Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia (FRY) was signed, and on 14 September 1996, elections were held in Bosnia and Herzegovina which were considered fair and free by the Organization for Security and Cooperation in Europe (OSCE). On 1 October 1996 the United Nations Security Council, by resolution 1074 (1996), lifted the economic sanctions against the Federal Republic of Yugoslavia and the Republika Srpska. The economic reconstruction of the region is now under way, and the international community is slowly preparing to withdraw from the region.

2. At the same time, the full truth about the horrible crimes against humanity committed between 1991 and 1995 can no longer be concealed. It is still difficult to believe that, exactly 50 years after the Nazi holocaust, another genocide could occur in Europe as a result of a similar ideology based on nationalism, racial and religious hatred and the obsession of creating "ethnically pure" States. While the international community was watching without taking proper action, the systematic policy of "ethnic cleansing" operations, planned and carried out by nationalistic politicians, military and paramilitary groups as well as civilians who were themselves victims of racist propaganda, resulted in the mass exodus of more than 2 million refugees and internally displaced persons, in the death of more than 200,000 human beings, in the economic destruction of vast areas of the region, and in the most horrendous acts of torture, systematic rape and similar expressions of barbarity. The great majority of the victims of the second European genocide of the twentieth century were civilians of Muslim origin.

3. If one compares this with the 25,000 persons who are still missing in Bosnia and Herzegovina and Croatia, the phenomenon of disappearances seems to be of minor importance. If, however, one views this figure in the context of the some 50,000 cases of disappearances in more than 60 countries in different parts of the world which the United Nations Working Group on Enforced or Involuntary Disappearances has registered since 1980, it appears that, at the present time, the number of cases of missing persons registered and unclarified in the former Yugoslavia is among the highest in the world.

4. Moreover, the experience with disappearances in other countries shows that a solution to the problem of missing persons is a major precondition for reconciliation and a lasting peace based on justice. We cannot change the facts which occurred in the past. However, the families of the missing persons have the legitimate right to know the truth and to get their loved ones back, alive or dead. They also have a right to compensation, and to

provide their deceased relatives with a decent burial. Finally, they have the right to demand that those who are primarily responsible for the disappearance, torture or arbitrary execution of their loved ones are brought to justice.

5. There is no doubt that those who started to incite racial and religious hatred and those who waged the war and carried out the "ethnic cleansing" operations bear the main responsibility for all the suffering that followed. But among the civilian population, and in particular among the families of the missing persons, there is a strong tendency to blame the international community, above all their fellow Europeans, for not having protected them. At a time of universal consensus that the international protection of human beings against gross and systematic violations of their basic human rights is no longer considered as interference with the sovereignty and internal affairs of "the State", we also have to recognize the legal, moral and political responsibility of the international community, above all the powerful States in the region, to prevent acts of genocide and to protect the population against other gross and systematic violations of human rights. Notwithstanding the many well-intended actions taken, we must admit that the international community - above all the Europeans - did not live up to its responsibility towards the people of the former Yugoslavia. Since the past cannot be changed, in the present all efforts should be made to relieve the suffering of those who survived the genocide. To assist the families of missing persons in their desperate search for the truth is a small contribution which the international community, if the political will existed, could easily provide. The Dayton Peace Agreement and other relevant sources of international law provide a sufficient legal framework to act. We only need the political will, and the necessary financial resources to implement it.

6. The present report, which is the third report on the special process dealing with missing persons in the former Yugoslavia, 1/ covers the expert's activities during the period under review and analyses the situation of missing persons and the phenomenon of disappearances in Croatia and Bosnia and Herzegovina. During the past year the expert concentrated his efforts primarily on the situation in Bosnia and Herzegovina. This decision was based on several factors. First, the continuing non-cooperative attitude of the Government of the Federal Republic of Yugoslavia was a serious obstacle to his efforts to clarify the fate of the missing persons in Croatia; secondly, owing to the present political situation, there seemed to be a greater need in Bosnia and Herzegovina than in Croatia to facilitate the tracing activities, to prepare the exhumations and to establish coordination mechanisms; and finally, his election to the Human Rights Chamber for Bosnia and Herzegovina by the Committee of Ministers of the Council of Europe provided the expert with the opportunity to travel regularly to Bosnia and Herzegovina.

1/ The first report is contained in document E/CN.4/1995/37 and the second in E/CN.4/1996/36.

I. MANDATE AND METHODS OF WORK

7. Owing to the extraordinary nature, both in qualitative and quantitative terms, of the problem of missing persons in the territory of the former Yugoslavia, and the fact that the mandate of the Working Group on Enforced or Involuntary Disappearances does not cover cases resulting from international armed conflicts, in 1994 the Commission on Human Rights established the special process as a joint mandate of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and the Working Group on Enforced or Involuntary Disappearances. Mr. Manfred Nowak was appointed as the expert in charge of the special process. In 1995, in its resolution 1995/35 entitled "Special process dealing with the problem of missing persons in the territory of the former Yugoslavia", the Commission on Human Rights changed the special process into an independent mandate. It is to be noted that this is the first mandate established by the Commission on Human Rights which has both a country-specific and a thematic character. The nature of the mandate is humanitarian and non-accusatory; it aims to determine the fate of thousands of missing persons in the former Yugoslavia and thereby alleviate the suffering of their relatives.

8. The Commission on Human Rights, in its resolution 1996/71, extended the mandate of the special process for one year and requested the expert to submit a report to the fifty-third session of the Commission. At the same time the Commission further defined the mandate of the expert by requesting him to coordinate his efforts with other international actors in the field, to prepare a comprehensive plan concerning the excavation of mass graves and the exhumation of mortal remains, and to assume responsibility for securing appropriate support, including financial assistance, for these tasks.

9. The present report covers the expert's activities in the aftermath of the armed conflict and the post-Dayton period in Bosnia and Herzegovina, during the deployment of UNTAES. In this respect, the regular methods of work had to be adapted to the new situation in the field. Up to the end of 1995, the special process essentially functioned as a channel of communication between non-governmental organizations or the family members of the victims, regardless of whether the victims were combatants or civilians, and the forces allegedly responsible for their disappearance, with a view to establishing the fate and whereabouts of the missing persons (see E/CN.4/1995/37). Most of the work was accomplished by written communications, consultations in Geneva and the assistance of the High Commissioner's human rights field offices, and the expert undertook only a few missions to the field.

10. During the period under review, the focus of the mandate changed considerably. The expert spent a significant amount of his time in the field in order to personally coordinate his activities with other international actors, to attend all relevant meetings, to regularly negotiate with the parties, and to facilitate and monitor the process of exhumations. He also attached great importance to the need to raise funds for a comprehensive programme of forensic activities.

II. ACTIVITIES OF THE EXPERT

A. Visits and consultations

11. Since March 1996, the expert has spent between one and two weeks per month in the region, primarily in Sarajevo. He regularly met with representatives of Governments, non-governmental organizations, family members of missing persons and representatives of the international community. He attended the monthly meetings of the Working Group on Missing Persons chaired by the International Committee of the Red Cross (ICRC), the Expert Group on Exhumations and Missing Persons, and other bodies involved in negotiation, mediation and coordination. He travelled extensively in both entities of Bosnia and Herzegovina and paid several short visits to Croatia (Zagreb, plus one visit to Vukovar and Osijek).

B. Communications relating to individual cases of missing persons

12. During the period under review, the special process received a total of 3,058 cases through non-governmental organizations and field offices, which were considered, processed and transmitted to the authorities allegedly held responsible. In compliance with his division of labour with the ICRC (see paras. 33-36) most tracing requests were transferred to the ICRC.

13. Although the Government of the Federal Republic of Yugoslavia has officially accepted responsibility for the cases of missing persons which occurred during the armed conflict in 1991 between the Yugoslav National Army (JNA) and the Croatian forces, it has never responded to any of the cases which were transmitted by the expert during the past years. During the period under review, 128 more cases of missing persons of Croat origin were transmitted to the Government of the Federal Republic of Yugoslavia. The majority of these cases occurred during the years 1991-1992, for which the JNA and the Serb paramilitary groups were allegedly responsible. This time the cases were to the expert with the following note from the responsible government offical:

> "I have the honour to inform you that, concerning missing persons, the Federal Republic of Yugoslavia has been for some time actively cooperating with the competent bodies of the Republic of Croatia, which is the reason why I am returning to you the forms you have sent me."

14. Two cases were transmitted to the President of the Federation of Bosnia and Herzegovina. These cases concerned one Croat and one Serb who are said to have been abducted in 1993 by the Croatian Defence Forces (HOS).

15. Two cases were transmitted to the Government of Bosnia and Herzegovina under the urgent action procedure. These cases concerned two ethnic Serbs who disappeared in 1996 while travelling between Dobrinja and Trnovo on a portion of road controlled by Federation forces. Twenty-one other cases were transmitted to the same Government, of which two concerned ethnic Serbs who allegedly disappeared in 1992 and 1995. The other cases concerned ethnic Croats who were reported missing from Bugojno in 1993 and for which the

Government, together with the local authorities, are allegedly responsible. It is said that these persons were forcibly taken to the "Prusac" detention centre and to "Iskra" stadium. From there, they were then transferred to an unknown destination.

16. A list of 2,925 names of persons of Serb origin for whose disappearance the Croatian forces are allegedly responsible was transmitted to the Government of Croatia. A number of these names concerned persons who reportedly disappeared during the armed conflict in 1991. The majority concerned persons who were reported as missing in 1995, subsequent to the operations "Flash" and "Storm".

17. During the period under review, no communication was received from any of the above-mentioned authorities concerning the cases of missing persons transmitted to them. The special process is, therefore, unable to report on the fate and whereabouts of the persons concerned.

C. Coordination with other relevant institutions active in Bosnia and Herzegovina

18. With the entry into force of the Dayton Peace Agreement on 14 December 1995, the tracing of missing persons in Bosnia and Herzegovina, like many other humanitarian and human rights tasks, in fact became a joint effort of the parties and various international organizations. Therefore, the United Nations Commission on Human Rights in resolution 1996/71 (para. 34) requested the expert to coordinate his efforts with other international bodies and demanded that all parties fully cooperate with him. In addition to the support provided to the expert by the United Nations High Commissioner for Human Rights, the staff of the United Nations human rights field operation in the former Yugoslavia and the United Nations Mission in Bosnia and Herzegovina (UNMIBH), the expert worked in close cooperation with high representatives of the Government of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (Muslim and Croat side), the Republika Srpska and the institutions and organizations, among others, described in the following paragraphs.

19. State Commission of Bosnia and Herzegovina for the Tracing of Missing Persons. This official body of the Government of Bosnia and Hezegovina which, together with the Muslim side of the Federation, in fact represents the Bosnian Muslim interests in the ICRC-chaired Working Group on Missing Persons, still maintains a list of 26,887 missing persons of whom 98 per cent are Bosnian Muslims.

20. Office for the Exchange of Prisoners and Missing Persons of the Croatian Side of the Federation of Bosnia and Herzegovina. Together with the Bosnian Croat forces (HVO), this office represents the Croatian side of the Federation in the ICRC-chaired Working Group on Missing Persons. As of 13 December 1996, this office maintained a list of 651 Bosnian Croats missing as a result of armed conflict with Bosnian Serb forces as well as a list of 218 Bosnian Croats missing as a result of armed conflict with the Bosnian Army.

21. State Commission of the Republika Srpska for the Exchange of Prisoners of War and Missing Persons. Together with the former Minister of Health of the Republika Srpska, this commission represents the interests of the Bosnian Serbs in the ICRC-chaired Working Group on Missing Persons. Even though this commission did not provide any information directly to the special process, it is said that some 2,000 Bosnian Serb soldiers are allegedly still unaccounted for.

22. State Commission of Bosnia and Herzegovina for Gathering Facts on War Crimes. This official body established by the Presidency of Bosnia and Herzegovina carries out research and investigations concerning war crimes and crimes against humanity. This task also comprises research on the phenomenon of enforced disappearances. To this end the Commission has registered more than 5,000 missing persons.

23. Croation Government Commission for Detained and Missing Persons. This official body of the Croatian Government primarily deals with Croats missing as a result of the armed conflict with the JNA. As of 19 November 1996 the total number of persons sought by this Commission was 2,534. Most efforts are directed at bilateral negotiations with the Federal Republic of Yugoslavia Government Commission for Humanitarian Issues and Missing Persons. Both commissions also represent their respective Governments as observers in the ICRC-chaired Working Group on Missing Persons.

24. Office of the High Representative (OHR). According to annex 10 of the Dayton Peace Agreement, the OHR was established to monitor the implementation of the peace settlement, to coordinate the activities of civilian implementation, and to maintain liaison with IFOR. Most of the coordination bodies relating to missing persons in Bosnia and Herzegovina mentioned below were chaired by the OHR and/or took place at his headquarters in Sarajevo. Moreover, the OHR made a major contribution in facilitating the process of inter-party exhumations.

25. Multinational military implementation Force (IFOR). In resolution 1031 (1995) of 15 December 1995, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the establishment of IFOR in accordance with annex 1-A of the Dayton Peace Agreement. It is composed of more than 53,000 troops from 16 member nations of the North Atlantic Treaty Organization (NATO), 12 Partnership for Peace nations and 8 other nations. In addition to its military tasks, IFOR has the right, as spelled out in annex 1-A, article VI, paragraph 3, of the Agreement, "to fulfil its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following: (a) to help create secure conditions for the conduct by others of other tasks associated with the peace settlement" and "to assist ... other international organizations in their humanitarian missions". It is beyond doubt that the tracing of missing persons by all means, including the excavation of mass graves and exhumation of mortal remains, is covered by these provisions. Although IFOR has provided the International Criminal Tribunal for the former Yugoslavia (ICTY) with the requested assistance and full personal security for the forensic experts working at mass grave sites, the expert on missing persons and other institutions concerned with exhumations for the purpose of

identifying missing persons, despite repeated requests, unfortunately were not provided with such support. In particular, IFOR refused to provide site security, convoy security, demining and detecting of mass graves. It did, however, offer general security, information and emergency services.

26. In accordance with its mandate, IFOR was terminated on 20 December 1996. The Security Council, by resolution 1088 (1996) of 12 December 1996, established, as of 20 December 1996 for a period of 18 months, a multinational military Stabilization Force (SFOR) as the legal successor to IFOR to fulfil the role specified in annex 1-A and annex 2 of the Dayton Peace Agreement. SFOR will also provide support to UNTAES in case of emergency. SFOR initially will be half the size of IFOR.

27. International Police Task Force (IPTF). In resolution 1035 (1995) of 21 December 1995, the United Nations Security Council decided to establish the IPTF as a United Nations civilian police operation in accordance with annex 11 of the Dayton Peace Agreement. It is composed of 1,709 unarmed police monitors from 34 countries. Its tasks are to monitor, observe and inspect law enforcement activities and facilities, to advise and train law enforcement personnel, to assess threats to public order, and to report on human rights violations. Under annex 11, article IV, paragraph 3, IPTF has the right to inspect any police station and place of detention. With respect to the identification of mass grave sites and the exhumation of mortal remains, IPTF provided valuable assistance including convoy security and monitoring of local police. Since IPTF personnel are not armed, full personal security can, however, only be provided by IFOR and SFOR.

28. The Security Council by resolution 1088 (1996) of 12 December 1996 extended the mandate of the UNMIBH, which includes IPTF, for an additional period terminating on 21 December 1997.

29. United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). By resolution 1037 (1996) of 15 January 1996, the United Nations Security Council established this peace-keeping operation with the aim of a peaceful reintegration of the region of Eastern Slavonia, Baranja, and Western Sirmium into the Republic of Croatia. UNTAES is composed of almost 5,000 military personnel from nine nations and more than 900 civilians including human rights officers and monitors. On 21 June 1996 the demilitarization of the region was completed which was a major precondition for the excavation of mass graves and other activities aimed at clarifying the fate of missing persons. UNTAES provided valuable support, in particular regarding the identification and guarding of suspected mass grave sites in the region and the exhumation of mortal remains at the Ovcara gravesite in September 1996.

30. Office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR provides assistance and relief to more than 2 million refugees and internally displaced persons in the former Yugoslavia. In accordance with article I, paragraph 5, of annex 7 of the Dayton Peace Agreement, UNHCR is developing, in close consultation with asylum countries and the parties, a

repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and internally displaced persons. Although the tracing of missing persons falls outside UNHCR's mandate, the Office offered its cooperation to the expert with respect to tracing persons among the beneficiaries of its programmes.

31. Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia. Since the establishment of the special process in 1994, the expert cooperated closely with the Special Rapporteur, in particular by exchanging relevant information. This cooperation is facilitated by the human rights field operation of the High Commissioner for Human Rights which supports both mandates of the Commission on Human Rights. One example of this cooperation was the joint operation conducted by Finnish forensic experts to collect and identify unburied mortal remains in the Kravice region.

32. International Criminal Tribunal for the Former Yugoslavia (ICTY). In resolution 808 (1993) of 22 February 1993, the United Nations Security Council decided to establish the ICTY at The Hague with the mandate of investigating war crimes, genocide and crimes against humanity, and bringing individual perpetrators to justice. Up to the end of 1996, 74 presumed perpetrators had been indicted, of whom only seven are actually detained at The Hague. Only one, who pleaded guilty, has so far been sentenced. His term of imprisonment has been set at 10 years. In one other case the verdict is expected shortly. The Office of the Prosecutor has investigation teams in the field to collect evidence by various means including the forensic investigation of mass grave sites and the exhumation of mortal remains. In this respect, the expert closely cooperates with the ICTY. The aims of exhumation are, however, different. While the Tribunal conducts an exhumation at an alleged grave site only to obtain evidence in support of indictments, which might often be limited to a certain number of mortal remains, the expert aims at the total exhumation of a given site for the sole and purely humanitarian purpose of identifying as many missing persons as possible.

33. International Committee of the Red Cross (ICRC). Under international humanitarian law applicable in international armed conflicts, in particular article 123 of the Third and article 140 of the Fourth Geneva Convention of 1949, this Geneva-based organization is the principal agency authorized to collect all the information it can obtain through official or private channels concerning prisoners of war and protected civilians. In addition, article 33, paragraph 3, of Additional Protocol I to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts, stipulates that all tracing requests and information concerning missing persons shall be transmitted to the Central Tracing Agency of the ICRC or national Red Cross (Red Crescent, Red Lion and Sun) Societies. In view of this overall competence of the ICRC, the Working Group on Enforced or Involuntary Disappearances does not deal with situations of international armed conflict.

34. When the Commission on Human Rights, in resolution 1994/72 of 9 March 1994, established the special process on missing persons in the territory of the former Yugoslavia, it was obvious that the mandate overlapped with that of the ICRC. Although the mandate of the expert is broader than that of the ICRC, as it deals with cases of missing persons in any part of the former Yugoslavia which resulted from an international or non-international

armed conflict as well as with enforced disappearances not related to any armed conflict, it is difficult to distinguish clearly between these different situations in the complex context of the events in the former Yugoslavia. From the very beginning, therefore, the expert aimed at establishing fruitful cooperation with the ICRC based on a mutual exchange of information and division of labour.

35. In article V of annex 7 of the Dayton Peace Agreement, the Bosnian parties agreed to provide information on all persons unaccounted for through the tracing mechanisms of the ICRC and also to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for". Neither the special process nor the Special Rapporteur on the situation of human rights in the former Yugoslavia is explicitly mentioned in the Dayton Peace Agreement, and they are only indirectly referred to in the context of the general provision of article XIII of annex 6. Nevertheless, the Commission on Human Rights, in resolution 1996/71 of 23 April 1996, decided to extend both mandates and requested the expert to coordinate his efforts with the ICRC and other organizations concerned, particularly through the Expert Group on Exhumations and Missing Persons. The expert, therefore, agreed with the ICRC on the following division of labour regarding missing persons in Bosnia and Herzegovina. He significantly reduced his own tracing activities, participated only as an observer in the ICRC-chaired Working Group on Missing Persons established in accordance with article V of annex 7 of the Dayton Peace Agreement (see below), made all the tracing requests he had received (but which the ICRC had not received) available to the ICRC, and referred new applicants to the ICRC office in Sarajevo or to one of the 120 local Red Cross branches in Bosnia and Herzegovina. On 12 June 1996, the ICRC launched a tracing campaign by, inter alia, publishing a book with the names of all missing persons on its file and inviting the families to react to the information contained in the book and to submit further tracing requests. By the end of 1996, three editions of the book had been published and the number of tracing requests significantly increased. At the same time the expert concentrated his efforts in Bosnia and Herzegovina on the exhumation of mortal remains as one method of clarifying the fate and whereabouts of missing persons. These activities were coordinated with ICRC, ICTY and other organizations in the framework of the Expert Group on Exhumations and Missing Persons (see below).

36. This division of labour changed when the ICRC during the fall of 1996 reversed its policy regarding the excavation of mass graves and indicated its interest in getting directly involved in exhumation activities. As a result, the ICRC assumed the long term custody of the ante-mortem database (AMDB) which was originally envisaged by the Expert Group on Exhumations and Missing Persons to be maintained under the auspices of the High Commissioner for Human Rights.

37. Physicians for Human Rights (PHR). PHR is a Boston-based non-governmental organization of forensic anthropologists, archaeologists, pathologists and other health professionals that seeks to use medical and scientific knowledge to protect human rights and promote accountability for violations of human rights and humanitarian law, in particular by investigating mass graves to identify victims of extrajudicial executions. It

entered into a collaborative relationship with ICTY and started in July 1996 to exhume mass graves in Bosnia and Herzegovina and Croatia on behalf of the Tribunal. In addition to providing evidence for ICTY, the autopsies also lead to the identification of deceased missing persons.

38. The expert cooperates with PHR in the tasks of monitoring exhumations conducted by the parties and establishing an AMDB of all missing persons in Bosnia and Herzegovina. This project has been financed primarily by the Commission of the European Union, coordinated by the Expert Group on Exhumations and Missing Persons and carried out by PHR and the Association for the Promotion of the Ludwig Boltzmann Institute of Human Rights (see below).

39. Association for the Promotion of the Ludwig Boltzmann Institute of Human Rights (BIM). This Vienna-based non-governmental organization was established to promote and support the research and field activities of the Ludwig Boltzmann Institute of Human Rights which is an interdisciplinary research institute and documentation centre in the field of human rights affiliated with the University of Vienna. BIM has carried out a number of legal and empirical research projects on ethnic cleansing in Bosnia and Herzegovina in support of the Commission of Experts established pursuant to Security Council resolution 780 (1992) of 6 October 1992 and of ICTY. In June 1996, BIM started two research projects in support of the special process. One is financed primarily by the Government of the Netherlands and aims at investigating the root causes, the precise extent and circumstances of the phenomenon of disappearances in the former Yugoslavia, and the other is financed primarily by the Commission of the European Union and aims at collecting relevant data for an AMDB by conducting interviews with the family members of missing persons in close collaboration with PHR.

40. Finnish Expert Team. With the financial assistance of the Governments of Finland and the Netherlands, an expert team of 22 Finnish forensic anthropologists, pathologists, investigators, demining experts and health professionals supported the expert in his exhumation efforts, in particular in relation to mortal remains discovered in the Kravice region (see below). The first investigations were carried out in early spring of 1996. In July, the unburied mortal remains of some 30 bodies were collected and brought to Tuzla Hospital for post-mortem examination. Some members of the Finnish Expert Team continued their investigations during the fall of 1996, subsequent to the resumption of activities in the framework of the Joint Forensic Expert Commission on Exhumation.

41. ICRC-chaired Working Group on Missing Persons. The Working Group was formally established on 30 March 1996 in accordance with article V of annex 7 of the Dayton Peace Agreement. It is chaired by the ICRC and is made up of representatives of the parties to the conflict in Bosnia and Herzegovina, i.e. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (Muslim and Croat side), and the Republika Srpska, with the OHR as Ranking Member. Representatives of the Republic of Croatia, the FRY, of States witnesses to the signature of the Dayton Peace Agreement (European Union, France, Germany, Russian Federation, United Kingdom and United States), IFOR, the expert on missing persons as well as representatives of associations of families attend as observers. As of 19 December 1996, the Working Group had held a total of nine sessions at the OHR in Sarajevo. Meetings usually lasted a full day.

Although the Working Group presently acts as the main channel for information on missing persons between the parties and although more than 15,000 cases have been formally submitted to the parties, the number of answers by the parties is fairly small, and only a very few missing persons could be found alive. The ICRC informed the expert that as of 3 October 1996, a total of 552 cases submitted to the Working Group could be considered clarified; 443 clarifications were based on answers obtained from the parties (only one person was alive; the others were clarified primarily as a result of exhumations by the parties), while 79 cases could be closed thanks to witnesses or based on other sources available to the ICRC. Of the latter 27 persons were found alive, while 52 were dead.

42. After the ICRC changed its policy towards exhumations, it announced on 1 November 1996 that it would suggest to the Working Group that it establish an Operational Arm aimed at implementing decisions of the Working Group, in particular to "conduct the joint exhumations presently undertaken under the auspices of OHR".

43. Expert Group on Exhumations and Missing Persons. On 22 February 1996, the Expert Group was established on the initiative of various organizations in order to coordinate the efforts of the international actors involved in exhumation activities. It is chaired by the OHR. In 1996 it held a total of 15 meetings in Vienna and Geneva through May, and since June in Sarajevo. Its membership has been gradually enlarged. At present it is composed of the OHR, the High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights, the expert on missing persons, ICTY, IFOR, IPTF, UNTAES, ICRC, PHR, BIM, a representative of the United States Government, and the newly established International Commission on Missing Persons in the Former Yugoslavia (ICMP, see below). A focal point has been established at the OHR to prepare the meetings and to coordinate exhumation activities between meetings. The Expert Group agreed on common guidelines and minimum standards for professional exhumations, including the need for the establishment of an AMDB before large-scale exhumations could be undertaken as well as the need to actively involve the Bosnian parties and local forensic experts in these activities. It also assisted the expert in his efforts to prepare a budget for a comprehensive programme of forensic activities and to raise funds from the international community. It entrusted PHR and BIM with the task of establishing an AMDB, coordinated a programme of international forensic experts seconded by Governments aimed at assisting and monitoring exhumations and autopsies carried out by the Bosnian parties, and established a Joint Forensic Expert Commission on Exhumation in order to organize and carry out inter-party exhumations.

44. Joint Forensic Expert Commission on Exhumation. After extensive discussions in the Expert Group on Exhumations and Missing Persons on how to actively involve the Bosnian parties in exhumation activities on the territory of another party, the OHR convened a meeting with representatives of the parties and associations of families on 25 June 1996 in Banja Luka. The parties agreed on a list of priority sites and a preliminary timetable for the clearing of unburied mortal remains, and established a joint expert commission consisting of two forensic pathologists from each party, with the task of implementing the agreed-upon inter-party exhumations. This joint "Banja Luka exhumation process", however, soon met with serious political problems and was

in fact stalled for many weeks during the summer months. Only after a high-level political meeting on 4 September 1996 chaired by the OHR in Sarajevo could an "operational agreement on exhumations and the clearing of unburied mortal remains" be reached, on the basis of which joint exhumations were continued at five priority sites: Kravice, Ozren, Glamoc, Koprivna and Bosanski Brod.

45. International Commission on Missing Persons in the Former Yugoslavia (ICMP). In his last report to the Commission (E/CN.4/1996/36, para. 81), the expert proposed the establishment of a "high-level multilateral commission on missing persons" composed of representatives of the Governments of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Republic of Croatia, the FRY and key international personalities. Originally, this initiative did not receive much support from the international community and was, therefore, not reflected in resolution 1996/71.

46. At the Group of Seven (G-7) Summit in Lyon, France, however, United States President Clinton on 29 June 1996 made a similar proposal when he announced the formation of an "international blue ribbon commission on the missing in the former Yugoslavia", with former Secretary of State Cyrus Vance as its Chairman. Although the United States Government until then had been extremely reluctant towards the efforts of the expert to facilitate exhumations for the purpose of identifying missing persons, President Clinton in this statement also announced that the commission "will also reinforce efforts to ensure that exhumations, when necessary to identify the fate of missing persons, are conducted under international supervision and in accordance with international standards. In addition, the commission will facilitate the development of an ante-mortem database to support exhumation efforts". The United States Government contributed US$ 2 million at the time the Commission was established, part of which is expected to support the programme of forensic activities.

47. On 11 October the International Commission on Missing Persons in the Former Yugoslavia (ICMP), as it has now been officially named, held its initial meeting in Geneva with the following members present: Cyrus Vance, Chairman; Lord Carrington, former British Foreign Secretary; Jose Ayala-Lasso, High Commissioner for Human Rights; and Cornelio Summaruga, President of the ICRC. Other members include Robert Badinter, former French Minister of Justice; Max van der Stoel, OSCE High Commissioner on National Minorities and former Dutch Minister of Foreign Affairs; Sahabzada Yaqub-Khan, Minister of Foreign Affairs of Pakistan, Milan Milutinovic, Federal Minister for Foreign Affairs of the FRY; Mate Granic, Minister for Foreign Affairs of Croatia, Haris Silajdzic, Co-Chairman of the Council of Ministers, from the Muslim side of the Federation of Bosnia and Herzegovina; Jadranko Prlic, Minister of Foreign Affairs, from the Croat side; and Dragan Kalinic, Chairman of the Republika Srpska Assembly. The OHR serves as special adviser. Other advisers who participated in the Geneva meeting included the expert on missing persons as well as representatives of UNTAES, IFOR, IPTF, ICTY, the United Nations Mine Action Centre (MAC), ICRC and PHR.

48. The ICMP identified priority areas for future action, including support for families and survivors, pressure on the parties to cooperate in the ICRC-chaired Working Group on Missing Persons and in conducting humanitarian exhumations, as well as creating a central source of accurate information. During the fall of 1996, the ICMP established an office in Sarajevo, and in late November the Chairman and some members paid a first visit to the region.

D. Fund-raising

49. The expert was requested by the Commission on Human Rights resolution 1996/71 (para. 36) "to assume responsibility for securing appropriate support, including financial assistance, for the activities of the Expert Group", i.e. for a comprehensive programme of forensic activities. Subsequent to consultations with the Expert Group on Exhumation and Missing Persons, the expert drew up a comprehensive budget of US$ 6,120,000 necessary for exhumation and identification of some 1,000 bodies (see annex II), and made an appeal to Member States for financial contributions or contributions in kind. Moreover, the expert pointed out that exhumations and identifications undertaken by local authorities must be carried out in accordance with international standards and monitored by the international community. He presented this budget to representatives of States on 30 May 1996 in Geneva, and thereafter organized further briefings and fund-raising meetings with State representatives in New York (6 June), Sarajevo (13 August) and Geneva (23 August and 21 November).

50. Subsequent to the first meeting on 30 May 1996, only the Governments of Finland and the Netherlands decided on a common operation which consisted of a team of 22 Finnish forensic experts who were sent to the region of Kravice, in Republika Srpska, to collect unburied mortal remains. The French Government made available two forensic experts to monitor excavations carried out by local authorities. The European Union contributed financially to the AMDB project which is being carried out by two non-governmental organizations. In addition, the Government of the Netherlands contributed financially to a research project conducted by BIM in support of the special process.

51. Subsequent to the expert's fund-raising appeals in August, the Swiss Government made available a forensic expert and contributed financially to PHR for its activities. The French Government also sent on two occasions three more forensic experts for monitoring. As of October 1996, the Governments of Ireland, Denmark and Germany had made the first financial contributions for this purpose. Contributions from other Governments, e.g. Norway, could be made available in early 1997. Moreover, $2 million contributed by the United States Government at the time of the establishment of the ICMP, is expected to be partly used in support of the programme of forensic activities.

52. Although the international community seems to be slowly becoming more understanding concerning the need to clarify the fate and whereabouts of missing persons by means of exhuming and identifying mortal remains, and therefore more responsive to the fund raising appeals, there is still an urgent need for considerably greater contributions to finance the comprehensive programme of forensic activities requested by the Commission on Human Rights in paragraph 34 (a) of resolution 1996/71.

E. Facilitating the exhumation of mortal remains

1. Background and problems

53. In his last report to the Commission (E/CN.4/1996/36, paras. 74-79), the expert drew the attention of the international community to the need for excavating mass graves and exhuming and identifying the mortal remains of missing persons. He stressed that "the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls". He added, however, that "if the authorities concerned are not willing to carry out the excavation, then the task will fall to international organizations and mechanisms, including the special process". Consequently, the expert requested the Commission to consider this issue and to authorize the necessary resources.

54. The response of the international community to this appeal was far from enthusiastic. The United States Government, in particular, was extremely reluctant to get the international community involved in exhumation activities beyond those conducted by ICTY. It was argued that the problem of missing persons should be solved by putting pressure on the parties concerned to disclose all relevant information rather than by excavating mass graves and, thereby, risking the danger of interfering with the peace process. These arguments were also strongly supported by the ICRC which stressed that it would not participate in any exhumation activities. The expert, on the other hand, was supported primarily by the Governments of Croatia and Bosnia and Herzegovina which agreed that the clarification of the fate and whereabouts of missing persons by all means, including the exhumation of mortal remains, was a necessary precondition for the process of reconciliation and to achieve a lasting and sustainable peace in the region.

55. The negotiations at the fifty-second session of the Commission on Human Rights resulted in the extremely vague compromise formulation of paragraph 34 of the Commission resolution 1996/71 drawing "attention to the need for immediate and urgent efforts to determine the fate of missing persons, including in cases where other means of determining the fate of the missing have proven unsuccessful and upon the recommendation by qualified experts that exhumation will provide an efficient means for resolving cases that are unlikely to be resolved by other means, an eventual examination by such experts of mass grave sites where arbitrary executions or killings of many thousands of persons are reported to have taken place, in particular, near Srebrenica, Zepa, Prijedor, Sanski Most and Vukovar, and the communication of any determination to the families of the missing". Nevertheless, the expert was requested to coordinate his efforts with ICTY, OHR, ICRC and the Special Rapporteur, particularly through the Expert Group on Exhumations and Missing Persons, to "prepare a comprehensive plan for dealing with this question", to facilitate the establishment of the AMDB, and to secure appropriate support, including financial assistance, for the activities of the Expert Group.

56. The expert's efforts to implement this fairly vague mandate of the Commission in order to facilitate exhumations for the purpose of clarifying cases of missing persons were further hampered by the extremely reluctant response of the donor community to his fund-raising appeals. Up to 15 October 1996, no contributions had arrived in the special account for

exhumations that had been opened. Fortunately, some donors agreed to contribute to the programme of forensic activities by making funds available through other channels. After extensive consultations, the Expert Group in late spring agreed on the following initial programme of action:

(a) Establishment of an ante-mortem database for all ICRC-registered missing persons in Bosnia and Herzegovina with a first priority for missing persons from the Srebrenica region;

(b) Priority for ICTY exhumations and close cooperation with ICTY in order to ensure that all mortal remains discovered in a given grave site are exhumed and an attempt made to identify them;

(c) Encouragement, assistance and monitoring by international forensic experts of exhumations conducted by the parties themselves on territory under their control;

(d) Encouragement, assistance and monitoring by international forensic experts of inter-party exhumations;

(e) Priority for mortal remains discovered on the surface either by the parties concerned or by international forensic experts.

57. The implementation of this initial programme of action met with considerable political, financial and other obstacles. There were major differences of opinion among the Bosnian parties concerning inter-party exhumations, and the policy of reciprocity seriously endangered the process. In addition, no satisfactory general solutions to the problems of demining and security of the experts working in the field could be achieved within the Expert Group. In particular, IFOR consistently refused to provide the same assistance to humanitarian exhumations as it had agreed to provide to ICTY. Nevertheless, in joint efforts, with the active support of various actors, in particular the OHR, some progress could be achieved in the course of the period under review, as outlined below.

2. Ante-mortem Database

58. The Commission on Human Rights, in resolution 1996/71 (para. 34 (b)) underlined "the need for the establishment of an ante-mortem database to assist with identification of the dead before large-scale exhumations can be considered". Consequently, the expert put the establishment of an AMDB high on his agenda although no funds had been made available through official United Nations channels. The Expert Group, therefore, requested two non-governmental organizations, PHR and BIM, to raise funds and to set up a joint project, coordinated by the Expert Group and to be carried out under the auspices of the High Commissioner for Human Rights. When the ICRC reversed its policy towards exhumations (see above), and subsequent to a meeting between the High Commissioner and the President of the ICRC on 1 November 1996 in Geneva, it was, however, decided that ICRC would assume the long-term responsibility for and custody of the AMBD.

59. Thanks to generous contributions from the Commission of the European Union and the Government of the Netherlands, the joint AMDB project could start in July 1996. As had been agreed, the project during its initial phase concentrated on collecting data on the roughly 6,500 Bosnian Muslims missing from the region of Srebrenica. Since the majority of their families presently live in and around Tuzla, it was decided to establish the headquarters there. If in the course of the ongoing exhumations the need should arise to collect data on other missing persons, the project is flexible enough to respond to such requests. Following a request from the authorities of the Republika Srpska, it was also decided to establish an office in Banja Luka, in order to collect data on missing persons of Serb origin.

60. PHR has the overall responsibility for the establishment and maintenance of the AMDB. This includes the development of a computer database with the assistance of experts from the University of Tuzla, the overall methodology of the project, and a comprehensive questionnaire for the collection of all pertinent information regarding missing persons which is necessary for the purpose of identification by comparing it to post-mortem information recovered at the time of autopsy of victims exhumed from mass graves. This information includes physical characteristics, type of clothing worn, personal effects, and history of injuries and damage to bones and teeth.

61. BIM is responsible for collecting the relevant data by conducting interviews with family members of missing persons. This includes the search for the respective family members (with the assistance of ICRC and local authorities), the recruitment and training of local interviewers, psychological supervision as well as the actual organization, coordination, carrying out and certification of all interviews. As at the end of 1996, some 30 interviewers had been recruited and trained in Tuzla and had conducted roughly 3,200 interviews with family members in and around Tuzla. Moreover, some 20 interviewers who are being trained in Banja Luka will start carrying out interviews in early 1997. It is expected that by spring 1997 the collection of most of the ante-mortem data concerning missing persons from Srebrenica will be completed. This will make possible the establishment of a comprehensive plan for exhumations in the region of Srebrenica during 1997 as requested by the Commission on Human Rights, subject of course to the necessary political, financial, logistical and security requirements.

3. Exhumations by ICTY

62. With the assistance of PHR, IFOR and IPTF, the Office of the Prosecutor of ICTY during the period under review had conducted exhumations for the purpose of collecting evidence at four sites in Bosnia and Herzegovina: Cerska, Nova Kasaba, Lazete and Branjevo Farm, Pilica. These exhumations were related to the alleged murder of civilians following the fall of Srebrenica. More than 425 bodies have been exhumed from these sites and are in the process of being autopsied. Until now only a small number of these bodies have been identified but the chances of identification will significantly increase as soon as all relevant ante-mortem data is available. In addition, ICTY exhumed 200 bodies from a mass grave at Ovcara near Vukovar.

4. Exhumations at the Kravice hillside

63. In January 1996, the Special Rapporteur, during one of her missions to the Republika Srpska, was shown a considerable number of unburied mortal remains scattered over a comparably large, mountainous and remote forest near the village of Kravice, some 10 kilometres from Srebrenica. It is supposed that these are mortal remains of Bosnians of Muslim origin, victims from Srebrenica. In accordance with the policy of the Expert Group to attach priority to the recovery of unburied mortal remains, even in the absence of ante-mortem data, a joint project between the Special Rapporteur and the expert was developed aimed at removing all mortal remains from the site and transporting them to Tuzla for autopsy. After extensive negotiations with the authorities of both entities, and with the generous financial assistance of the Governments of Finland and the Netherlands, it was agreed that the mortal remains would be recovered by a team of 22 Finnish experts and observed by a team of Bosnian Muslim experts. The Finnish team included two demining experts. Although IFOR did not provide the requested site and convoy security similar to the assistance provided to ICTY, it was decided to start the project in June on the basis that IPTF had offered its full support (in conjunction with general area security of IFOR) and the authorities of the Republika Srpska had, in principle, agreed to the project. By 5 July 1996, the Finnish expert team had recovered the mortal remains of some 30 bodies when they were ordered by the Minister of Interior of the Republika Srpska to stop their activities. Although this decision obviously violated earlier agreements, the expert, taking into account the refusal of IFOR to provide the requested security, decided to halt the project.

64. In view of the fact that this site is estimated to contain several hundred unburied remains, it was later designated as one of the priority sites of inter-party exhumations. Since August, the remains of approximately 200 further victims have been collected by Bosnian Muslim experts. All remains have been brought to the hospital in Tuzla where they are being autopsied by Bosnian Muslim experts with the assistance of the Finnish team. As of the end of November, none of the bodies had been identified.

5. Inter-party exhumations

65. The Expert Group has adopted the policy of encouraging the local authorities to carry out exhumations themselves. On 25 June 1996, the Joint Forensic Expert Commission on Exhumation, comprising the three parties, was established under the auspices of the OHR to facilitate exhumations across the inter-entity boundary line.

66. The Expert Group decided that international forensic physicians had to monitor the exhumations and identification of bodies undertaken within the Joint Commission's activities to ensure that they were carried out in accordance with international standards. In this regard, and subsequent to the expert's appeal, the Government of France provided two forensic experts for a period of three weeks and one forensic expert for a period of one week as well as two others for a period of two weeks, and the Government of Switzerland provided an expert for a period of five weeks.

67. However, the Republika Srpska imposed the de facto principle of a one-to-one body exchange which was then followed by the Bosnian Croat authorities. Consequently, the inter-party exhumations were suspended at the end of July 1996. Owing to the efforts of the OHR, the Joint Commission was able to resume activities as of 4 September 1996.

68. To date five sites have been excavated within the framework of the Joint Commission's mandate. In the territory under Federation control, the mortal remains of 106 persons of Serb origin exhumed from the site at Glamoc were all identified. The mortal remains of 35 persons of Serb origin who were killed in 1995 were collected from the surface at Ozren; only eight have been identified. In Bosanski Brod, Republika Srpska, 15 bodies of persons of Croat origin, which were all identified, were exhumed from a cemetery for reburial in a Catholic cemetery. A second site in the Bosanski Brod area, in Koprivna, was excavated and 11 mortal remains were exhumed of which none has yet been identified. Moreover, the project carried out by Finnish experts in Kravice, Republika Srpska, which had to be abandoned owing to the Republika Srpska authorities' sudden non-cooperation, was continued by the Joint Commission. From this site the unburied mortal remains of some 200 Bosnian Muslims were collected, of which none has yet been identified.

6. Exhumations by the parties on territory under their control

69. All Bosnian parties carried out excavations of mass graves on their own territory if there was reason to believe that persons of their own ethnic community were buried there. This was the case, in particular, in areas which had to be handed over from one party to another pursuant to the Dayton Peace Agreement. Often the parties had fairly detailed information beforehand on who was buried where, which means, of course, that not all persons exhumed were registered as missing and that the percentage of identification was comparatively high.

70. The State Commission of Bosnia and Herzegovina for the Tracing of Missing Persons provided the expert with a detailed list of 35 mass graves in the regions of Sarajevo, Gorazde, Jajce, Sanski Most, Kljuc and Donji Vakuf which had been excavated during 1996. In these 35 mass graves the mortal remains of a total of 1,052 persons were exhumed of whom not less than 869 could be identified. The largest of these graves were Laniste 1 and 2 near Kljuc with 187 and 77 bodies exhumed (144 and 70 persons identified), Svrake near Sarajevo (67 bodies exhumed and 48 persons identified) and Sasina near Sanski Most (65 bodies exhumed and 64 persons identified). In addition, more than 100 bodies were exhumed and identified from individual graves near Sarajevo, Mostar, Kljuc and Sanski Most.

71. The State Commission of the Republika Srpska for the Exchange of Prisoners of War and Missing Persons carried out excavation of a mass grave near Mrkonic Grad where the mortal remains of 186 persons were exhumed of whom 140 could be identified. Other mass graves were identified and will be excavated in 1997. According to the information provided by the State Commission of Bosnia and Herzegovina for the Tracing of Missing Persons from a grave site in Nevesinje, 52 mortal remains were exhumed by the Republika Srpska authorities of which 49 have been identified as Bosnians of Muslim origin who were killed by the Bosnian Serb forces in 1994.

72. The Office for the Exchange of Prisoners and Missing Persons of the Croat side of the Federation also carried out some excavations near Jajce, Kupres and other areas under their control but no exact details have been provided. However, according to the information provided by the State Commission of Bosnia and Herzegovina for the Tracing of Missing Persons, the Croat side of the Federation conducted exhumations at grave sites in Carevo Polje near Jajce and Modric, Capljina. From the first site 57 mortal remains were exhumed, of which 25 could be identified as Bosnians of Muslim and Croat origin who were killed by the Bosnian Serb forces in 1992. From the second site 26 mortal remains were exhumed of which 18 could be identified as Bosnians of Muslim origin who were killed by the Bosnian Croat Forces in 1993.

7. Monitoring of exhumations by international forensic experts

73. As mentioned above, the Governments of France, Switzerland and Finland as well as PHR made available a few forensic experts to monitor inter-party exhumations as well as exhumations by the parties on territory under their own control. In addition, human rights monitors of the United Nations, the European Union, the OSCE and other organizations observed some of these exhumations with the aim of ensuring that international standards were adhered to. These monitoring efforts were, however, far from satisfactory owing to the fact that the international organizations often were not properly informed by the parties and that not enough international forensic experts were available.

III. SITUATION OF MISSING PERSONS IN CROATIA

74. The majority of the roughly 3,000 cases of missing persons which the special process transmitted to the Government of the FRY were related to the armed conflict between the Croatian forces and the Yugoslav National Army (JNA) together with Serb paramilitary groups such as Arkan's "Tigers", Seselj's "White Eagles" and Martic's forces. The armed confrontation between the two communities of Serbs and Croats living in Croatia started in early March 1991 when Pakrac (ex-Sector West) fell under Serb control. On 3 May 1991 the JNA intervened in Borovo Selo (Sector East) and afterwards took an active role in the conflict. In July 1991, after intense fighting in Eastern Slavonia, Erdut, Dalj and Aljmas were captured by the Serb paramilitary groups and the JNA. The city of Vukovar became, as of August 1991, the target of heavy shelling and attacks by the JNA and the Serb paramilitary groups, namely the "Tigers" and the "White Eagles". On 18 November 1991, after 86 days of resistance and heavy fighting, the Croatian National Guard in Vukovar finally surrendered.

75. The majority of these Croatian missing persons disappeared from Eastern Slavonia, and in particular from Vukovar and its hospital. When the city of Vukovar fell, the JNA and the paramilitary forces captured the hospital. According to various sources, the director of the hospital and the commander of the JNA had agreed to evacuate the Croatian patients to Croatian-held territory, with the ICRC and the European Community Monitoring Mission supervising the operation. Nevertheless, on 20 November 1991, only women, children and the elderly were transported to Croatian-held territory. The other patients were, allegedly, transferred to the JNA barracks, and their whereabouts remain unknown.

76. In 1992, a forensic expert discovered a mass grave in Ovcara, 6 km south-east of Vukovar. Subsequently, the mass grave was under constant guard by the United Nations forces to prevent any attempt to open or otherwise disturb the site. In September 1996, a team of forensic experts from PHR, with the full security and logistical support of UNTAES (including the demining of the site), excavated the Ovcara site and exhumed the mortal remains to collect war crimes evidence for the International Criminal Tribunal. The mortal remains of 200 persons have been transferred to the medical school of Zagreb for identification, of which, to date, 90 have been identified as the missing persons from the Vukovar hospital. The forensic physicians believe that all the exhumed remains from Ovcara belong to the missing persons who disappeared on 20 November 1991 from the hospital in Vukovar.

77. In 1995 and 1996, the expert transmitted to the Government of Croatia lists of 2,973 missing persons of Serb origin who allegedly disappeared subsequent to the Croatian offensives "Flash" and "Storm" launched in May and August 1995 to recapture territories of the United Nations Protected Areas (UNPA) West, South and North.

78. Operation "Flash" started on 1 May 1995 in Western Slavonia and lasted for four days. Despite the Cessation of Hostilities Agreement between the warring parties which was negotiated by the United Nations on 3 May 1995, the fighting continued till 4 May 1995 when in late afternoon the Croatian Serb forces surrendered. It is reported that some 1,300 Croatian Serb males were transferred to detention centres in Varazdin, Pozega and Bjelovar for interrogation, and the fate of many of them remains unknown. It is further reported that some 8,000 civilians, mainly women, children and the elderly, fled the fighting and sought refuge in Bosnia and Herzegovina, in particular in Banja Luka, Nova Topola and Dubica. Consequently, the majority of families were separated, some of their members leaving and the others remaining or detained. The same day the President of the Security Council issued a statement expressing deep concern at reports that the human rights of the Serb population of Western Slavonia were being violated.

79. Operation "Storm" was launched on 4 August 1995. The offensive lasted for four days, and according to reports, many human rights abuses and violations of fundamental freedoms of civilians were committed by the Croatian Army. It was also reported that Serb men were separated from the elderly, women and children and taken away by Croatian officials for interrogation; the whereabouts of many of them remain unknown. It was further reported that soldiers systematically looted and burned houses in localities they captured. As one witness stated after the fall of the city of Knin on 5 August 1995, "sectors of the city were ablaze and [there were] dead bodies in the streets". Consequently, local ethnic Serbs felt their security to be at stake and thousands fled to north and west Bosnia and Herzegovina and to the FRY. It is estimated that 95 per cent of the population of Sectors South and North (i.e. around 200,000 persons) left their home towns, while some thousands were reported blocked in their villages owing to the constant shelling of the roads and attacks by Croatian troops. This situation also resulted in the separation of families, some members leaving and others staying behind, each trying to determine the others' fate.

80. After the Operations "Flash" and "Storm", the Croatian Government Commission for Detained and Missing Persons carried out a number of excavations of mass graves in the former UNPAs West, South and North. As of 27 August 1996, a total of 553 bodies, including 212 women, had been discovered in these mass graves as well as in individual graves.

81. Moreover, several thousand persons of Serb origin who were fleeing through the highway to Belgrade were allegedly killed by the Croatian Army in Spacva Forest. Owing to the large size of the Spacva Forest, the exact site of the mass grave where they were buried is not known but it could be between the village of Bosnjaci (near Zupanja) and the village of Lipovac. According to reports, during operation "Storm" the Croatian Army conducted another mass killing on the road between Glina and Bosanski Novi, near the villages Gornji and Donji Zirovac where mass grave sites have allegedly been located.

82. According to the non-governmental organization Croatian Helsinki Committee some 2,000 persons of Serb origin are still missing subsequent to the operations "Flash" and "Storm".

83. During the period under review, the Croatian Government Commission for Detained and Missing Persons and the FRY Government Commission for Humanitarian Issues and Missing Persons held meetings only at the working group level. During the meeting of 16 and 17 April in Zagreb, the Chairmen of the respective Commissions signed a protocol on cooperation between the two Commissions based on exchanging and disclosing information on detained and missing persons. However, on 20 and 21 August at the meeting of the working group in Zagreb, the FRY Commission declared that there were no Croatian detainees in that country and submitted a list of 1,096 persons who were killed in Vukovar in 1991, of whom 755 were identified and 341 were non-identified. From this list, only 93 persons were registered as missing by the Croatian Government Commission and the others were already known by their families to be dead. The FRY Commission has delivered death certificates for 496 persons on that list. According to the Croatian Commission the death certificates do not contain sufficient identification data of the persons concerned.

84. On 23 August 1996 the Ministers of Foreign Affairs of the Republic of Croatia and the FRY signed an Agreement on the Normalization of Relations. Pursuant to article 6 of this Agreement both parties undertake "to accelerate the process of resolving the issue of the missing persons without delay, whereas both Contracting Parties shall immediately exchange any available data on such persons". Nevertheless, during the October meetings of the Croatian and FRY Commissions, again no significant progress could be achieved. As of 19 November 1996, the total number of missing persons sought by the Republic of Croatia was still 2,534 of whom more than 1,200 are reported missing from the Vukovar-Srijem region. More than 80 per cent have been registered as missing since 1991. The Croatian Commission repeatedly accused the JNA and the Belgrade Military Medical Academy of not disclosing the identification protocols in their possession of 1,400 identified and more than 350 unidentified persons. The FRY Commission seeks some 1,000 missing persons but reportedly insists on resolving only a smaller number of cases of persons mostly missing in Bosnia and Herzegovina and makes the resolving of all other cases conditional upon this.

85. It appears, therefore, once again that despite the normalization of relations between the two countries the bilateral Commission has not functioned effectively and that the clarification of the fate and whereabouts of missing persons in Croatia has been linked to the resolution of missing persons in Bosnia and Herzegovina. It is to be hoped that the recently established International Commission on Missing Persons in the Former Yugoslavia (ICMP), in which high-level representatives of the FRY, Croatia and the three parties of Bosnia and Herzegovina participate, will be able to exert more pressure on all parties concerned to disclose all the relevant information they possess.

IV. SITUATION OF MISSING PERSONS IN BOSNIA AND HERZEGOVINA

A. Historical background

86. Subsequent to the declaration of independence of the Republic of Bosnia and Herzegovina on 3 March 1992, the Serbian Democratic Party on 27 March 1992 proclaimed the Serbian Republic of Bosnia and Herzegovina. Throughout the month of March 1992, there were clashes between the communities in Sarajevo. As from 7 April 1992, when Sarajevo came under intense artillery fire by the JNA, the war broke out all over the country. It is reported that between May and July 1992 thousands of civilians of Muslim origin were killed while thousands more were detained in concentration camps and a considerable number deported. By the end of summer of 1992 some 40,000 Muslims had allegedly been killed in eastern Bosnia and Herzegovina. According to the ICRC figures some 5,000 Bosnians of Muslim origin disappeared during the period May to July 1992, while the Bosnian Commission for the Tracing of Missing Persons alleges that almost 10,000 persons went missing during the same period.

87. Moreover, many disappearances occurred in the context of the armed conflict between the Bosnian Croat forces and the government army. Tension between the two communities intensified in April 1993, and on 15 April 1993 fierce fighting broke out. Towns such as Zenica, Vitez, Konjic, Kiseljak and Jablinca were constantly shelled, and houses were looted and burned and a number of mosques were destroyed. In May 1993, sporadic fighting was concentrated in Mostar and the surrounding area. In order to establish Mostar as an "ethnically clean" capital of the self-proclaimed "Republic of Herceg-Bosna", the Bosnian Croat forces (HVO) were forcing out civilians of Muslim origin. A blockade was reportedly imposed on the 55,000 Muslims remaining in the eastern part (Muslim sector) of the city and the population was forced to live in conditions of extreme deprivation, especially of food and medicine. According to United Nations officials, in May 1993 some 200 civilians of Muslim origin were detained by Bosnian Croat forces in and around Mostar. On 26 June 1993, the Bosnian Croats and the Bosnian Serbs launched a joint attack on a number of towns in central Bosnia and Herzegovina including Maglaj, Zepce and Zavidovici. In September 1993, a Bosnian Croat official admitted that the living conditions of some 4,000 Bosnian Muslims who had been detained in June and July 1993 and were being held in three centres near Medjugorje were poor and did not comply with the provisions of international humanitarian law.

88. The President of the Security Council in his statement of 3 February 1994 expressed the commitment of the Security Council to "consider serious measures if the Republic of Croatia fails to put an immediate end to all forms of interference in the Republic of Bosnia and Herzegovina". Subsequently, the Government and the Bosnian Croat forces signed on 23 February 1994 a general cease-fire agreement which took effect one day later. On 18 March 1994, representatives of the Governments of Bosnia and Herzegovina and the Republic of Croatia signed the Washington Accord on the creation of the Federation of Bosnia and Herzegovina between the Government of Bosnia and Herzegovina and the Bosnian Croats.

89. On 6 July 1995 the Bosnian Serb forces attacked Srebrenica which had been declared "safe area" by the Security Council in resolution 819 (1993) of 16 April 1993. The city fell under Bosnian Serb control on 11 July 1995. It is reported that as the Bosnian Serb forces moved into the city, many inhabitants of Srebrenica sought refuge in Potocari, 5 km north of Srebrenica, where the UNPROFOR compound was situated. Potocari was also seized on 12 July 1995. Bosnian Serb forces transported women, children and the elderly to the confrontation line west of Srebrenica from where these people had to walk 6 km to reach Kladanj in Government-held territory. Military-age and able men between the ages of 15 and 70 were allegedly either taken to Bratunac or assembled in the football stadium at Nova Kasaba. Several thousand inhabitants of Srebrenica fled the town shortly before it fell under Bosnian Serb control and walked for many days (some even for several weeks and months) through the woods to Government-held territory. During this "death march" they were the targets of constant attacks by Bosnian Serb forces. According to the displaced persons' testimonies, civilians were subjected to summary executions and more than 2,000 men who had surrendered in the village of Kravice were shot in groups of 5 to 10. Moreover, many dead bodies were seen in Potocari, and on the way between Bratunac and Konjevic Polje. A number of women unaccounted for were reportedly prevented from travelling to Government-held territory.

90. Subsequent to years of war and horror, finally, under the auspices of the Contact Group, negotiations to reach a peaceful settlement to the conflict in Bosnia and Herzegovina were held during the period 1 to 20 November 1995, at Wright-Patterson Air Force Base in Dayton, Ohio, United States of America. On 20 November 1995, the Presidents of the Republics of Bosnia and Herzegovina, Croatia and Serbia agreed on the terms of a General Framework Agreement and a total of 12 annexes thereto. On 14 December 1995 the Dayton Peace Agreement was officially signed in Paris and entered into force upon signature.

B. Number of Missing Persons

91. One year after the cessation of hostilities and the entry into force of the Dayton Peace Agreement, the exact number of missing persons is still greatly disputed. The State Commission on Missing Persons of Bosnia and Herzegovina, according to information provided to the expert on 7 October 1996, still maintains a list of 26,887 missing persons of whom 24,484 (91 per cent) are men and 2,403 (9 per cent) women. Almost 98 per cent of these are Bosnians of Muslim origin. The Republika Srpska is held responsible for 24,742 cases (92 per cent), of which 22,049 (89 per cent) are

civilians and only 2,693 (11 per cent) military. The Croat side of the Federation is held responsible for the remaining 2,145 cases (8 per cent) of whom 1,095 (51.9 per cent) are civilians and 1,050 (49 per cent) military.

92. According to information provided to the expert on 13 December 1996, the Office for the Exchange of Prisoners and Missing Persons of the Croatian side of the Federation of Bosnia and Herzegovina still maintains a list of 651 Bosnian Croats missing as the result of the armed conflict with Bosnian Serb forces and another list of 218 Bosnian Croats missing subsequent to the fighting with the Government forces in 1993.

93. The State Commission of the Republika Srpska for the Exchange of Prisoners of War and Missing Persons did not provide the expert with a precise list of missing persons. Its representatives claim, however, that more than 2,000 Bosnian Serbs are still missing.

94. With these figures taken into consideration, the three Bosnian parties are still in search of 30,000 missing persons, the huge majority of whom (roughly 27,000, i.e. 90 per cent) are Bosnian Muslims while some 2,000 are Bosnian Serbs and fewer than 1,000 are Bosnian Croats. There is, however, no doubt that the actual number of missing persons is in fact significantly lower than these official figures and that the lists include persons, in particular soldiers, who are known to have died in the armed conflict and whose families do not consider them as missing. Furthermore, the cases that have been clarified as the result of exhumations or that have been erroneously included in the files of missing persons have only partly been deleted. In December 1996, representatives of the Bosnia and Herzegovina State Commission indicated to the expert that the actual number of missing Bosnian Muslims was between 23,000 and 24,000.

95. According to statistics provided by ICRC to the expert on 27 September 1996, the number of missing persons in Bosnia and Herzegovina registered in accordance with official tracing requests submitted by family members was 15,151, i.e. roughly half that alleged by the parties. Of these, 14,305 (94.4 per cent) are men and 846 (5.6 per cent) women; 12,713 (83.9 per cent) are Bosnians of Muslim origin, 1,798 (11.9 per cent) Bosnians of Serb origin, 489 (3.21 per cent) Bosnians of Croat origin and the rest of Montenegrin, Macedonian and other origins. A total of 8,506 missing persons (56.1 per cent) are civilians and 6,645 (43.9 per cent) military. The great majority (10,413 persons, i.e. 69 per cent) are between 20 and 50 years of age, but 36 children below 10 years of age and 63 elderly persons of more than 80 years are also among those reported missing.

96. The ICRC figures seem to be more accurate than those of the Bosnian parties since they are exclusively based on individual family tracing requests which are cross-checked by the ICRC officials. On the other hand, the ICRC campaign, which started in June 1996, has not yet been terminated and during the meeting of the ICRC Working Group on Missing Persons of 13 December 1996, the deadline for submitting tracing requests had to be extended. In fact, the process of opening new family tracing requests has not slowed down in recent months and will probably continue at the same pace in 1997. This is partly due to the fact that the ICRC started only in 1995 to systematically collect tracing requests, and that many new requests date back to events that occurred

in 1992. Between 15 August and 27 September 1996, the total number of tracing requests by families increased from 13,826 to 15,151 and between 27 September and 21 November 1996 it rose to 15,992 requests. It can therefore be assumed that the number of tracing requests will reach 20,000 during the first semester of 1997. Moreover, there might be genuine cases of missing persons on the official lists of the Bosnian parties in which the families, for one reason or other, are not able or no longer wish to file a tracing request with the ICRC.

97. Taking into consideration all the information available to the special process and provided by the Bosnian parties, the ICRC and the associations of family members, it can be concluded that not less than 20,000 persons are still missing in Bosnia and Herzegovina, of whom more than 90 per cent are men and between 80 per cent and 90 per cent of whom are Bosnians of Muslim origin. The Bosnian Serb forces are allegedly responsible for the disappearance of the great majority of the cases (between 80 per cent and 90 per cent). With respect to the information concerning the percentage of cases of disappearance of civilians and combatants, the figures provided by the sources vary significantly. However, it is beyond doubt that the overall majority of the missing persons are civilians. This categorization is an important indicator of the root causes of the phenomenon of disappearances in Bosnia and Herzegovina. While the majority of missing Bosnian Serbs and Bosnian Croats seem to be soldiers who were allegedly killed and/or disappeared in the course of the various conflicts, the situation is different with respect to the Bosnians of Muslim origin. According to the governmental figures, about half of the victims for whose disappearance the Bosnian Croat forces are allegedly responsible are soldiers. However, 90 per cent of the victims for whose disappearance the Bosnian Serb forces are allegedly responsible are civilians. This significant difference indicates that most of the missing Bosnian Muslims were not victims of armed combat but of "ethnic cleansing" operations carried out by the Bosnian Serb forces against the Muslim civilian population.

C. Dates and places of disappearance

98. Out of a total of 13,826 family requests collected by the ICRC as of 15 August 1996, the majority of 7,733 disappearances (56 per cent) allegedly occurred in 1995 (6,260 in July only), primarily in the districts of Srebrenica (2,813), Bratunac (2,658) and Zvornik (596). Other disappearances in 1995 were reported from the districts of Sanski Most (181), Zavidovici (167), Vlasenica (161), Mrkonjic Grad (117), Glamoc (110), Rogatica (94), Bosanski Petrovac (74), Drvar (73), Bihac (70), Kljuc (66) and Mt. Ozren (60). In 1992 5,301 cases of disappearances (38 per cent) allegedly occurred (in particular between May and July) in the districts of Zvornik (950), Prijedor (556), Vlasenica (502), Sarajevo (383), Foca (334), Visegrad (251), Bratunac (243), Kotor Varos (159), Rogatica (148), Bihac (124), Kljuc (115) and Srebrenica (101). In 1993 570 cases of disappearances (4 per cent) allegedly occurred, most of them in Mostar (69), Vlasenica (53), Prozor (47) and Srbrenica (41). In 1994 212 cases (less than 1.5 per cent) allegedly occurred, most of them in Srbrenica (25), Mostar (15), Bihac (14), Sarajevo and Nevesinje (13 each).

99. These statistical data provided by the ICRC clearly indicate different waves of disappearances which correspond to other reliable information on the practice of "ethnic cleansing" operations.

100. A first wave of disappearances occurred in eastern Bosnia between April and September 1992 in the context of military attacks and "ethnic cleansing" operations carried out by the JNA (Novi Sad Corps and Uzice Corps) and Serb paramilitary forces (especially Arkan's, Seselj's and the White Eagles) against the Muslim population in cities and towns at the river Drina (e.g. Zvornik, Visegrad, Foca) or close to it (e.g. Bratunac, Rogatica, Srebrenica, Vlasenica). The figures provided by the ICRC and the Bosnia and Herzegovina State Commission on Missing Persons are not significantly different. According to these figures, between 2,500 and 3,000 persons disappeared in eastern Bosnia in 1992, mainly during May and June. The first disappearances were reported in late March and April in Foca and Zvornik and until the end of the year, on a regular basis, in municipalities such as Vlasenica. Most of the persons who disappeared were middle-aged men (members of the political party SDA, intellectuals and businessmen) who were taken to concentration camps, such as the company "Novi izvor", and cultural centres "Celopek" or "Drinjaca" in Zvornik, the elementary school "Vuk Karadzic" in Bratunac or the notorious camp "Susica" in Vlasenica.

101. A second wave of disappearances occurred in Bosnian Krajina (western Bosnia and Herzegovina) between May and August 1992, most prominently in the region of Prijedor. The political background is similar to the "ethnic cleansing" operations conducted by the Bosnian Serb forces in eastern Bosnia, but among the victims were also Bosnian Croats, in particular members of the political party HDZ and business and religious figures. The military attack on the town of Prijedor began on 30 May 1992 and was immediately accompanied by mass killings, disappearances and other methods of "ethnic cleansing". The statistical data provided by the Bosnia and Herzegovina State Commission on Missing Persons concerning this region are more numerous than those provided by the ICRC. While the ICRC has, for example, only two cases of persons who disappeared in May 1992 in Kljuc among its tracing requests, the Bosnia and Herzegovina State Commission reports about 275 missing persons. Nevertheless, it is beyond dispute that thousands of human beings, most of them Muslims, disappeared in western Bosnia and Herzegovina during these four months. Most were brought to one of the 31 concentration camps and prisons which were established by the Bosnian Serb forces according to information provided by the Bosnia and Herzegovina War Crimes Commission and other sources. Most notorious were the concentration and death camps at "Omarska", "Trnopolje", "Manjaca", and "Keraterm".

102. In Herzegovina, most of the disappearances occurred during the summer of 1992 and the summer of 1993. Although the figures provided by the ICRC, the Bosnia and Herzegovina State Commission on Missing Persons and the Croatian side of the Federation differ significantly, one may draw the conclusion that the JNA and Bosnian Serb forces were primarily responsible for the disappearance of Bosnians of Muslim and Croat origin in 1992. A typical example is the "ethnic cleansing" of the non-Serb population in the municipality of Nevesinje in June 1992, which resulted in 296 cases of missing persons according to the State Commission of Bosnia and Herzegovina figures and 32 cases of missing persons according to the ICRC figures. In 1993, the

Bosnian Croat forces (HVO) are held to be primarily responsible for the disappearance of Bosnian Muslims, in particular in Mostar, Progor, Capljina and Stolac. Many of the missing persons were reportedly last seen at the HVO concentration camp "Heliodrom", a former military gymnasium in Mostar.

103. While in 1994 only a relatively small number of disappearances were reported, the last and most notorious wave of disappearances occurred in eastern Bosnia after the fall of the United Nations-declared "safe areas" of Srebrenica and Zepa in July 1995. According to the ICRC, in the month of July alone more than 6,000 Bosnian Muslims disappeared from Srebrenica, Bratunac, Zvornik, Vlasenica and Rogatica. Investigations by various bodies, including the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia, show that the great majority of these missing persons were victims of arbitrary executions and mass killings by Bosnian Serb forces, and are buried in the many mass graves located in this area. Until now, however, only a very limited number of bodies have been exhumed from these grave sites.

V. ROOT CAUSES OF THE DISAPPEARANCES

104. Analysis of the situation of the missing persons in Croatia and Bosnia and Herzegovina shows that the number of registered and unclarified cases of disappearances is among the highest in the world. The reasons for this phenomenon are, however, still hotly disputed. While the Serb authorities seem to argue that the missing are merely a consequence of the armed conflict, others feel that disappearances occurred as part of a planned strategy in the context of "ethnic cleansing" operations, in particular by the JNA and Serb paramilitary groups.

105. Taking into account that the majority of missing persons are civilians, that many of them were brought to concentration camps where they were last seen, and that the statistical data on the disappearances coincide with reliable information on "ethnic cleansing" operations, one can definitely establish a link between the policy of "ethnic cleansing" and the phenomenon of disappearances. This does not, however, answer the question whether the acts of disappearances as such were part of a planned strategy. If so, what were the reasons for making people disappear? Are there significant differences between acts committed by the Serb, Croat and Muslim authorities? Are the reasons for disappearances in Croatia similar to those in Bosnia and Herzegovina? Can we speak at all about acts of enforced disappearances as defined in the United Nations Declaration on the Protection of All Persons from Enforced Disappearance?

106. These and other questions relating to the root causes and precise circumstances of disappearances cannot easily be answered on the basis of the tracing requests and similar information available to the special process. Further evidence must be collected from former missing persons who have been released or who escaped, from alleged perpetrators of disappearances, from witnesses and families of missing persons and other sources of information, including the International Criminal Tribunal for the former Yugoslavia and intergovernmental, governmental and non-governmental organizations in the region. In order to assist the expert in this task, BIM, with the financial support of the Government of the Netherlands, in 1996 started a research project on the phenomenon of disappearances. The final report on this

research project will not be available before July 1997, but preliminary findings should be provided to the expert for his next oral report to the Commission on Human Rights in March 1997.

VI. CONCLUSIONS AND RECOMMENDATIONS

107. The year 1996 was crucial for the transition from war to peace in the former Yugoslavia. The Dayton Peace Agreement and the Basic Agreement on Eastern Slavonia, together with Security Council resolutions 1022, 1031 and 1037 (1995), constitute a solid basis for achieving a lasting and sustainable peace in Bosnia and Herzegovina and Croatia. This solid basis consists of a sufficiently strong international military presence in a clear link between the military and civilian components of both peace-keeping and peace-building operations. In particular, all parties to the General Framework Agreement for Peace in Bosnia and Herzegovina agreed that "the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace" (art. VII). The observance of human rights has two components: institution-building for the protection of human rights (in particular, the Constitutional Court of Bosnia and Herzegovina and the Human Rights Commission for Bosnia and Herzegovina) in the post-Dayton period based on the direct applicability of the European Convention on Human Rights, and the attempt to establish the truth, to provide some justice, and to encourage a process of reconciliation in dealing with the most serious and systematic human rights violations of the pre-Dayton period. The second task falls primarily on the ICTY and all those who are mandated to clarify the fate and whereabouts of missing persons in Bosnia and Herzegovina and Croatia.

108. The military aspects of both operations, entrusted to IFOR and UNTAES, has no doubt been a success of the international community. As the participants at the London Peace Implementation Conference of 4 and 5 December 1996 concluded, "peace has taken root: in 1996, no Bosnian has died in military conflict". The same holds true for Croatia and other parts of the former Yugoslavia. The expert is, however, unable to share the same optimistic evaluation by the Peace Implementation Council of the civilian implementation of the Dayton Peace Agreement, in particular of the achievements in the field of human rights, democracy and the rule of law. In his opinion, the international community has missed an important chance to protect and enforce human rights in Bosnia and Herzegovina during 1996. The people of Bosnia and Herzegovina at present do not enjoy their right to remain, their right to return, their right to live in dignity without fear, or the basic political rights and freedoms. While most indicted war criminals still live in their countries, millions of refugees and displaced persons are still forced to live away from their homes, and tens of thousands of families of missing persons are deprived of their right to know the truth about the fate and whereabouts of their loved ones.

109. The reasons for the ongoing human rights violations are twofold: a lack of political will by the parties to comply with their human rights obligations, and the lack of commitment by the international community to enforce human rights against the will of local politicians, if necessary by military force. From a military point of view, it would have been within the mandate of IFOR, and within its capabilities, to protect and enforce freedom of movement, expression and assembly, to arrest indicted war criminals, as

well as to guard and demine mass grave sites and to provide security for forensic experts who exhume mortal remains for the purpose of identifying missing persons. The reason for this failure were not military or logistical constraints but the lack of political will of the international community to make full use of the right of IFOR to "fulfil its supporting tasks" for the protection of human rights, as spelled out in article VI (3) of annex 1-A of the Dayton Peace Agreement. In this respect, UNTAES was definitely more successful in establishing a clear link between its military and civilian tasks.

110. In Bosnia and Herzegovina, some 20,000 persons are still missing. The great majority are Bosnian men of Muslim origin who became victims of "ethnic cleansing" operations carried out by the JNA, Serb paramilitary groups and Bosnian Serb forces between May and September 1992 and after the fall of Srebrenica and Zepa in July 1995. Among the missing are also Bosnian Muslims, victims of "ethnic cleansing" operations carried out by Bosnian Croat forces during 1993 in Herzegovina, as well as a limited number of combatants and civilians of all three ethnic communities who disappeared as a result of various armed conflicts between 1992 and 1995. Whether systematic acts of enforced disappearance in the sense of the Declaration on the Protection of All Persons from Enforced Disappearance occurred as a result of a planned strategy still needs to be further investigated.

111. In the post-Dayton period, the search for the missing in Bosnia and Herzegovina became a joint effort of the parties to the Dayton Peace Agreement, the families of missing persons, and a number of international institutions, above all the ICRC, OHR and the United Nations special process. Various implementation and coordination bodies have been established, such as the ICRC-chaired Working Group on Missing Persons, the Expert Group on Exhumations and Missing Persons, the Joint Forensic Expert Commission on Exhumation, and the International Commission on Missing Persons in the Former Yugoslavia. The actual results of this multitude of mechanisms are, however, far from encouraging. Only very few missing persons have been found alive, and some hundreds of bodies were identified after inter-party exhumations or exhumations carried out by the parties on territory under their control. The reasons for these shortcomings are manifold: a lack of political will by all the parties to disclose information; a continuing policy of reciprocity which characterizes the negotiations between the parties (from an exchange of prisoners of war to an exchange of mortal remains); a lack of political, logistical, financial and military support by the international community to the humanitarian efforts of searching for the missing by all means, including the exhumation of mortal remains; and a lack of efficient coordination and division of labour among the various international institutions involved.

112. In Croatia, some 5,000 persons are still missing. This includes more than 2,500 Croatian civilians and combatants who became victims of "ethnic cleansing" operations by the JNA and Serb paramilitary groups in late 1991, above all in Eastern Slavonia; up to 1,000 JNA soldiers allegedly still missing as a result of the armed conflict in 1991; and up to 2,000 Croatian Serb civilians who allegedly disappeared as a result of operations "Flash" and "Storm" carried out by the Croatian Army in May and August 1995. The information provided on missing Serbs is, however, far less detailed and reliable than the information available on missing Croats.

113. Owing to the continuing non-cooperative attitude of the Government of the FRY towards the special process, the contribution of the expert to the efforts of clarifying the fate and whereabouts of the missing persons in Croatia was very limited during the period under review. Some modest progress was achieved by means of exhumations carried out by the Croatian Government Commission for Detained and Missing Persons in the former UNPAs West, North and South, by ICTY exhumations in Ovcara and by bilateral negotiations between the Republic of Croatia and the FRY, with the assistance of ICRC, UNTAES and others. The actual achievements are, however, not much more encouraging than in Bosnia and Herzegovina, and the reasons for the shortcomings are similar.

114. The recent establishment, on the initiative of the United States Government, of the International Commission on Missing Persons in the Former Yugoslavia (ICMP) is a welcome development since it comprises, for the first time, high-level representatives of the FRY, Croatia and all Bosnian parties in addition to a number of well-known international personalities. It is the continuing conviction of the expert, as stressed in his last report to the Commission (E/CN.4/1996/36, para. 81), that only a high-level multilateral commission which comprises all relevant parties in the former Yugoslavia and which enjoys the full support of the international community will be in a position to exert sufficient pressure on all authorities concerned to disclose the relevant information and to proceed with the excavation of mass graves. The ICMP will, however, only be successful if it is able finally to link a solution to the burning issue of missing persons to the overall peace process, i.e. to the military components and to the economic assistance for reconstruction and development.

115. The expert, once more, deeply regrets the uncooperative and irresponsible attitude of the Government of the FRY towards the problem of many thousands of missing persons in the territory of the former Yugoslavia for whom it bears the main responsibility under international law. He reiterates his urgent request to the Government of the FRY, which was supported in various resolutions of the Commission on Human Rights and the General Assembly, to fully cooperate with the special process and to disclose all information relating to the fate and whereabouts of missing persons, whether alive or dead.

116. The Government of the Republic of Croatia is requested to continue its cooperation with the special process and, in particular, to disclose all information relating to persons who disappeared as a result of operations "Flash" and "Storm" and as a result of actions for which the Croatian side of the Federation of Bosnia and Herzegovina is held responsible.

117. The Government of Bosnia and Herzegovina, as well as the relevant authorities of the Republika Srpska, and the Croatian and Muslim side of the Federation of Bosnia and Herzegovina are requested to continue their cooperation with the special process. In particular, all the authorities should disclose all information on missing persons and refrain from the policy of reciprocity in respect of missing persons, whether alive or dead.

Furthermore, the Bosnian parties are requested to continue their efforts to clarify the fate and whereabouts of missing persons by means of exhumation, and to provide forensic experts working for the other parties or relevant international organizations with full and unrestricted access to all grave sites on territory under their control.

118. The expert wishes to remind all Governments in the former Yugoslavia of their responsibilities under the Declaration on the Protection of All Persons from Enforced Disappearance to fully investigate all reported cases of enforced disappearance, to bring the perpetrators to justice, and to provide the victims and their families with adequate compensation.

119. The expert strongly recommends to IFOR and its successor SFOR, as well as to the Governments making troops and support available, to provide the special process, ICRC, OHR and other international institutions concerned with all the assistance necessary to carry out their mandates aimed at clarifying the fate and whereabouts of missing persons in Bosnia and Herzegovina. UNTAES is requested to continue its support in this respect. In particular, all suspected mass grave sites need to be guarded and demined, and the forensic experts need to be provided with full personal security and protection while exhuming mortal remains in the field.

120. All international organizations and institutions involved in the search for missing persons, and those providing relevant support, are requested to better coordinate their activities and to establish a clear division of labour among themselves in order to avoid competition and duplication of efforts. The expert wishes to encourage the High Representative to make full use of his coordination task and liaison function with IFOR (SFOR) under annex 10 of the Dayton Peace Agreement and, in particular, to involve IFOR (SFOR) more actively in the joint efforts of excavation of mass graves and exhumation of mortal remains.

121. The international community is requested to pay more attention to the problem of missing persons in the former Yugoslavia, the solution of which is a major precondition for achieving a lasting and sustainable peace in the region. In particular, economic assistance for reconstruction and development should be made conditional on the willingness of all Governments and authorities concerned to fully cooperate with the special process, the ICRC, OHR, ICMP and other international institutions involved, to disclose all information regarding missing persons and to carry out exhumations. Furthermore, the international community is urgently requested to provide the necessary financial assistance for a comprehensive programme of forensic activities.

122. The High Commissioner for Human Rights is requested to continue providing assistance to the special process. In this context, the expert wishes to stress the need for the High Commissioner's field operation in the former Yugoslavia to establish a focal point on missing persons with the task of providing the special process with the necessary assistance in terms of personnel and logistics, of coordinating and facilitating the work of forensic

experts seconded by Governments, of monitoring exhumations by the parties, of coordinating the activities of the special process with those of other international institutions in the field, and of preparing and implementing a comprehensive programme of forensic activities as envisaged in paragraph 34 of Commission resolution 1996/71.

123. Finally, the expert wishes to request the Commission on Human Rights, when considering the extension of the mandate of the special process for another year, to define this mandate as unambiguously as possible. In particular, the special process should be entrusted to prepare and to assume the overall responsibility for implementing a comprehensive programme of forensic activities, to investigate the root causes and circumstances of the phenomenon of disappearances in the former Yugoslavia, and to submit periodic reports to the Commission and the General Assembly.

Annex I

MAP OF THE REPUBLIC OF CROATIA AND THE
REPUBLIC OF BOSNIA AND HERZEGOVINA

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Annex II

PROGRAMME OF FORENSIC ACTIVITIES TO ASSIST IN DETERMINING THE FATE OF MISSING PERSONS IN THE FORMER YUGOSLAVIA: BUDGET PROPOSAL

(12 MONTHS)

Activity	Estimated cost (US$)
Establishment of the ante-mortem database (AMDB), including operating and management costs for the first year	100 000
Computer hardware and software for the AMDB	20 000
Data collection for AMDB, including data collection through structured interviews with relatives of the missing	1 500 000
Training of personnel to conduct structured interviews with relatives of the missing	50 000
Excavation, exhumation and expert examination of 1,000 bodies	1 000 000
Purchase/lease of specialist and laboratory equipment and premises for exhumation, examination, transportation and storage of mortal remains, including association staff costs	1 000 000
Resident team of 3 expert forensic examiners able to conduct exhumations/examinations and, in particular, able to supervise exhumations undertaken by the parties in accordance with the established guidelines	450 000
Transportation and reburial of mortal remains	200 000
Demining and other associated security measures	1 000 000
Management, administration, logistical and other field operation costs	800 000
Total estimated expenditure (first 12 months)	6 120 000

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